

**STATE OF WEST VIRGINIA  
SUPREME COURT OF APPEALS**

C. CASEY FORBES, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

***In re* N.M., B.M., C.M., P.M., A.H., and Z.H.**

**No. 24-748** (Harrison County CC-17-2023-JA-151, CC-17-2023-JA-152, CC-17-2023-JA-153, CC-17-2023-JA-154, CC-17-2023-JA-155, and CC-17-2023-JA-156)

**MEMORANDUM DECISION**

Petitioner Custodian D.S.<sup>1</sup> appeals the Circuit Court of Harrison County’s November 15, 2024, order terminating his custodial rights to N.M., B.M., C.M., P.M., A.H., and Z.H., arguing that the circuit court erred in doing so.<sup>2</sup> Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the circuit court’s order is appropriate. *See* W. Va. R. App. P. 21.

In November 2023, the DHS filed a petition alleging that the petitioner, who was the children’s mother’s boyfriend at the time, abused and neglected the children by striking then-eleven-year-old N.M. with an open hand across the child’s face.<sup>3</sup> As a result of this physical abuse, the DHS alleged that all of the children were abused because they resided in the same home at the time of the incident.

In January 2024, the petitioner stipulated, in writing, that he smacked N.M. in the face and acknowledged that it was an inappropriate means of disciplining the child. He further stipulated that his actions left the other children in the home vulnerable to his physical abuse. Accordingly, the court adjudicated him of abusing and neglecting the children.

In February 2024, the petitioner moved for and was granted a post-adjudicatory improvement period. The terms included, among other things, that the petitioner submit to a psychological evaluation and follow the recommendations therein, participate in drug screens, complete parenting and life skills classes, attend supervised visits with the children, follow service

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<sup>1</sup> The petitioner appears by counsel Heidi M. Georgi Sturm, who filed the brief pursuant to Rule 10(c)(10)(b) of the West Virginia Rules of Appellate Procedure. The West Virginia Department of Human Services (“DHS”) appears by Attorney General John B. McCuskey and Assistant Attorney General Andrew T. Waight. Counsel Ashley Joseph Smith appears as the children’s guardian ad litem.

<sup>2</sup> We use initials where necessary to protect the identities of those involved in this case. *See* W. Va. R. App. P. 40(e).

<sup>3</sup> The petitioner and the children’s mother married shortly after the petition was filed.

provider recommendations, maintain a stable and clean home, refrain from drug and alcohol use, stay in contact with the DHS, and engage in individual and marital counseling.

In March 2024, Dr. Erin Teaff evaluated the petitioner's parental fitness. Dr. Teaff concluded that while the petitioner had a fair prognosis for improved parenting, he did not have the capacity to care for the children and provided recommendations that could assist the petitioner in gaining necessary parental skills. Dr. Teaff noted concern about the petitioner's anger problems and recommended that he engage in individual, marital, and family therapy; abstain from substance use; obtain employment; participate in parenting classes; and follow the court's instructions in order to demonstrate his commitment to improving his caretaking skills.

In October 2024, the court held a dispositional hearing at which several witnesses testified about the petitioner's efforts during his improvement period. Dr. Don Worth, who provided individual and marital counseling to the petitioner and the mother, testified that the petitioner missed numerous therapy appointments and stopped all contact with his office after May 2024. A Harrison County Day Report employee testified that the petitioner missed twenty-five scheduled drug screens and tested positive for marijuana on eight occasions before obtaining a medical cannabis card in June 2024. A Harrison County Community Corrections employee testified that the petitioner only attended one anger management class and failed to complete the program. A Child Protective Services ("CPS") worker testified that a domestic violence incident between the petitioner and the mother occurred in April 2024—after the petitioner completed a domestic violence course. The worker described an incident after a supervised visit wherein the petitioner drove around a DHS building yelling obscenities at the father of several of the children. The CPS worker opined that the petitioner was unsuccessful in completing his improvement period and recommended that the court terminate his custodial rights. The petitioner testified and acknowledged that he was not fully compliant with his improvement period because he drank alcohol, did not complete the anger management course, and failed to complete individual or marriage counseling.

In the resulting dispositional order, the court found that the petitioner failed to complete individual and marital counseling, tested positive for marijuana before obtaining a medical card, failed to drug screen on at least twenty-five occasions, failed to maintain employment, failed to maintain stable housing, and failed to follow the recommendations provided in his parental fitness evaluation. Ultimately, the court concluded that there was no reasonable likelihood that the conditions of abuse and neglect could be substantially corrected in the near future and that the children's best interests necessitated termination. Accordingly, the court terminated the petitioner's custodial rights to the children and prohibited post-dispositional contact with them. It is from this order that the petitioner appeals.<sup>4</sup>

On appeal from a final order in an abuse and neglect proceeding, this Court reviews the circuit court's findings of fact for clear error and its conclusions of law de novo. Syl. Pt. 1, *In re Cecil T.*, 228 W. Va. 89, 717 S.E.2d 873 (2011). Before this Court, the petitioner argues that the

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<sup>4</sup> The mother's and the biological fathers' parental rights were also terminated, and the permanency plan for the children is adoption in the current placement.

circuit court erred by terminating his custodial rights because he substantially, although not fully, complied with the terms of his post-adjudicatory improvement period.<sup>5</sup> However, upon review, we find no error in the court’s detailed findings that the petitioner failed to comply with the terms and conditions of his improvement period. Courts may terminate custodial rights “[u]pon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child.” W. Va. Code § 49-4-604(c)(6). There is no such likelihood when the individual has “not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child,” and this Court regularly affirms termination of parental, custodial, and/or guardianship rights upon a caretaker’s failure to participate in his or her improvement period. *Id.* § 604(d)(3); see *In re K.L.*, 247 W. Va. 657, 667, 885 S.E.2d 595, 605 (2022) (explaining that an individual’s failure to participate in his or her improvement period is “a statutorily-recognized basis upon which this Court regularly affirms termination of parental rights”). The record supports the court’s finding that the children’s best interest necessitated termination so that they could achieve permanent placement. Accordingly, the court did not err in terminating the petitioner’s custodial rights.

For the foregoing reasons, we find no error in the decision of the circuit court, and its November 15, 2024, order is hereby affirmed.

Affirmed.

**ISSUED:** November 25, 2025

**CONCURRED IN BY:**

Chief Justice William R. Wooton  
Justice C. Haley Bunn  
Justice Charles S. Trump IV  
Justice Thomas H. Ewing  
Senior Status Justice John A. Hutchison

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<sup>5</sup> The petitioner also argues that the court erred by failing to grant him a post-dispositional improvement period. However, the petitioner concedes that he failed to file a written motion, which precluded the court from granting it. See Syl. Pt. 4, in part, *State ex rel. P.G.-1 v. Wilson*, 247 W. Va. 235, 878 S.E.2d 730 (2021) (“A circuit court may not grant a[n] . . . improvement period under W. Va. Code § 49-4-610 . . . unless the respondent to the abuse and neglect petition files a written motion requesting the improvement period.”).

Additionally, the petitioner argues that the court erred by prohibiting post-termination contact between himself and the children. However, the petitioner cites to no supporting authority; thus, we decline to address this argument. See W. Va. R. App. P. 10(c)(7) (“The brief must contain an argument clearly exhibiting the points of fact and law presented, the standard of review applicable, and citing the authorities relied on, under headings that correspond with the assignments of error.”).